



Order Decision

Site visit made on 20 March 2018

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs

Decision date: 26 April 2018

Order Ref: ROW/3182861

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and Section 53A(2) of the Wildlife and Countryside Act 1981 and is known as Gloucestershire County Council Public Footpath MCR 35 Parish of Cranham Diversion Order 2016.
- The Order is dated 23 November 2016 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule. If confirmed, the Order will also modify the Definitive Map and Statement, in accordance with Section 53(3)(a)(i) of the Wildlife and Countryside Act 1981, once the provisions relating to the diversion come into force.
- There was one objection outstanding when Gloucestershire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

Summary of Decision: The Order is confirmed subject to modifications, as set out in the 'Formal Decision' below.

Preliminary Matters

1. No-one requested to be heard with respect to the Order and so I made an unaccompanied site inspection, taking account of the representations received.
2. This case concerns the proposed diversion of a footpath (part) that presently runs through the private garden to Mann's Court, a residential property. The route of the existing path through the garden is presently fenced by way of slip rails at one end and a timber post and sign at the other end directing walkers along a permissive path that has been created to avoid encroachment into the garden. As regards the proposed route, the objector opposing the Order is concerned about a loss of amenity arising from the sloping nature of the proposed route that has also required the installation of steps and a wooden support rail. These are already in situ.
3. The Authority indicated that works would be necessary to improve the condition of the steps by fitting with a non-slip surface and the realignment of a fence. In my view the wording of paragraphs 1 and 3 of the Order should be modified, if it is confirmed to provide for certification of the works to be carried out. Further, to specify a date when the Order comes into effect.

The Main Issues

4. The Order is made in the interests of the owner of land crossed by the footpath. Section 119 of the 1980 Act therefore requires that, before confirming the Order, I must be satisfied that:

- it is expedient in the interests of the owner of the land crossed by the footpath that the line of the path in question should be diverted;
 - the new footpath will not be substantially less convenient to the public as a consequence of the diversion, and;
 - the diversion must not alter the point of termination of a path otherwise than to another point on the same highway, and which is substantially as convenient.
5. If I am satisfied on the above points, I must then consider whether the diversion is expedient with respect to:
- the effect on public enjoyment of the right of way as a whole;
 - the effect on other land served by the existing right of way, and;
 - the effect on land over which the right of way is created.
6. I must also have regard to the provisions for compensation as set out in Section 28 of the 1980 Act.
7. In addition, I am required to take into consideration any material provisions of any Rights of Way Improvement Plan ('ROWIP') prepared by the Council.

Reasons

Whether it is expedient in the interests of the owner of the land that the footpath in question should be diverted

8. From point A, the existing route crosses an historic stone stile into a sloping field before entering part of the garden area of Mann's Court. Passing through removable slip-rails, it proceeds across a lawned area of the garden in a westerly direction to reach point B. At this point, the path continues in a westerly direction through open countryside.
9. By way of clarification, in addition to the slip rails mentioned above, a post and rail situated at the entrance to the garden at point B directs path users coming from the easterly direction to turn southwards to make use of a permissive path that has been created in order to avoid walking through the garden area to Mann's Court.
10. The Order is made to address concerns that the landowner has in terms of the close proximity of the path to Mann's Court. There have been instances of trespass and intruders gaining entry into the property. The owner is an elderly lady who feels particularly vulnerable given the relatively isolated location of her property. Diverting the footpath along the route of the permissive path would enable the property to be made more secure as required by the landowner and enable the private space to be used more effectively.
11. Privacy has not been cited by the landowner. However, from my site visit, I noted the very close proximity of the path to the property.
12. Having regard to the above, I am satisfied for the reasons given that it is expedient in the interests of the landowner that the footpath should be diverted.

Whether the new footpath will not be substantially less convenient to the public

13. Of course, the existing alignment of the footpath provides a more straightforward route than the proposed route that descends from points C before taking a straight line and then ascends again to point B to avoid the private garden area.
14. I found that the new footpath following the line of the permissive path runs down a slight slope for some 17 metres before evening out to run in an east-west direction for a further 48 metres before climbing back up the slope for 16 metres to point B where it re-joins the existing path coming from the west. Although visiting following a period of snow and rain where conditions underfoot were decidedly wet, I did not find the initial slope to be unacceptably steep. Moreover, the short flight of steps and railing did not appear out of context with the generally undulating countryside within which this path traverses. The historic stone stile at point A will be retained for those wishing to use this feature; however, the landowner will be required to provide a pedestrian gate at point C. Similarly, the short flight of timber steps presently surfaced with chicken wire will be re-fitted with anti-slip boards. In the event of the Order being confirmed, the Order should be modified to ensure that these works are carried out and certified by the Council before the existing route is stopped up.
15. In terms of length, the proposed route will be 33 metres longer. However, I do not consider this is significant given the length of the much longer recreational walk using this and other parts of the path in the area. In terms of convenience there is little to choose between them. As regards to the ease of use, the proposed route will include steeper sections; however, these sections are relatively short and are not untypical given the undulating character of the countryside in this area. The surface from point C will be improved through removal of scrub and tree roots and made more even as a result. In addition, the introduction of anti-slip steps and railings will provide a convenient walking experience for most, including some who may be less mobile.
16. In summary, although the proposed route will be longer it will not be significantly so. It has steeper sections but these are not in any way significant. On balance, I conclude that the new footpath will not be substantially less convenient to the public, which is the test I must apply.

Whether new path termination point (being on the same highway) is substantially as convenient to the public

17. The termination point at the eastern end of the footpath would be a short distance to the south of that of the existing route. Nevertheless, the Order satisfies the test that the termination points would be on the same highway as the existing footpath and that the route would remain substantially as convenient to the public. Moreover, the public would have a choice between using the stone stile at point A or the new gate at point C. Although point A will no longer be a public right of way, the enjoyment of the historic style will not be lost to the public.

The effect the diversion would have on public enjoyment of the path as a whole, and the effect with respect to the land served by the existing right of way and the land over which the right is to be created and any land held with it, having regard to the provisions for compensation

18. From point A, the existing views in a southerly direction open out down to the valley bottom and elevated land on the opposite side of the valley beyond. The views of the surrounding countryside are open, visually attractive and provide a pleasant walking experience. However, once the path enters the lawned garden area as it heads towards point B, these views are interrupted by trees and vegetation. Thus by contrast, the proposed path between point C and B offers an open aspect southwards for its entire length. The path will be fenced along the southern boundary to the property to separate walkers from stock. Given the available width and by comparison with the existing path that has Mann's Court on the one side and trees and vegetation on the other, I am satisfied that walkers will not feel that they are being enclosed. In fact, I found that the proposed path benefits from open and uninterrupted views of highly attractive rolling countryside.
19. While the objector has commented that the proposed path 'presses' walkers against the stock fence, the Authority has indicated that this will be moved 3 metres into the adjoining field to enable a full 2 metre width to be provided. I refer to my previous comments in respect of works to be carried out.
20. The land crossed by the existing and proposed routes would remain within the same ownership. There is no evidence that there would be any negative effect on land served by the existing or proposed routes. Although compensation issues have not been raised, the landowner has agreed to defray any compensation which becomes payable in consequence of the Order being confirmed.

ROWIP

21. No issues have been raised by the parties in this regard and there is nothing that would suggest the Order is incompatible with the Council's ROWIP.

Whether it is expedient to confirm the Order

22. It is the impact of the proposal on the convenience and public enjoyment which are the main concerns of the objector. It is the view of the landowner that confirmation of the Order would have a positive impact on security in particular.
23. As stated above the landowner has agreed to clear vegetation and tree roots to improve the route; moreover, the steps will be appropriately re-boarded and the fence line set back. This will go some way towards addressing the concerns of the objector. Whilst I understand that the permissive path has been in existence for some time, there is no supported evidence that it has had any adverse effects on the use of the path by walkers.
24. From what I saw at my site visit and having regard to the submissions made, there is nothing to suggest that it would not be expedient to confirm the Order. I therefore conclude that the Order should be confirmed.

Conclusions

25. Having regard to these and all other matters raised in the written representations, I conclude that the Order should be confirmed subject to the modifications described in paragraph 13 above.

Formal Decision

26. The Order is confirmed subject to the following modifications:

- In paragraph 1, delete the remaining words after the words 'shall be stopped up' and insert - "on 28 days from the confirmation of this Order or on such date as the Authority certifies that the work required to bring the new path into a fit condition for use by the public has been carried out, whichever is the later and thereupon the Definitive Map of Public Rights of Way for Gloucestershire shall be modified by deleting from it that public right of way."
- In paragraph 3, delete 'There shall from the date of confirmation of this Order' and insert "There shall at the end of 28 days from the confirmation of this Order..."

Gareth W Thomas

INSPECTOR

